

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

S.S.,

Plaintiff,

COMPLAINT

-against-

DIOCESE OF BROOKLYN;
FRANCISCAN BROTHERS, INC., a/k/a FRANCISCAN
BROTHERS OF BROOKLYN, a/k/a CONGREGATION OF
THE RELIGIOUS BROTHERS OF THE THIRD ORDER
REGULAR OF ST. FRANCIS; SAINT FRANCIS
PREPARATORY SCHOOL;

Index No. _____

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, S.S., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted by Brother Dominic Quigley, a Brother of the Franciscan Brothers and teacher at St. Francis Preparatory School serving in the Diocese of Brooklyn.

Parties, Jurisdiction and Venue

1. Plaintiff S.S. is a citizen and resident of the State of New York.
2. Defendant, Diocese of Brooklyn (hereafter, the “Diocese” or the “Diocese of Brooklyn”), is a religious institution and organization with principal offices located at 310 Prospect

Road West, Brooklyn, New York 11215. The Diocese of Brooklyn controls all Catholic religious, pastoral and educational functions in the boroughs of Brooklyn and Queens, encompassing approximately 180 parishes and 210 churches. The Diocese is a citizen and resident of the State of New York.

3. Defendant Franciscan Brothers, Inc., a/k/a Franciscan Brothers of Brooklyn a/k/a Congregation of the Religious Brothers of the Third Order Regular of St. Francis ("Franciscan Brothers") is a religious order of Brothers affiliated with the Roman Catholic Church with its provincial headquarters and principal place of business located at 135 Remsen St., Brooklyn, NY 11201-4212. Franciscan Brothers is a citizen and resident of the State of New York. At all relevant times, Franciscan Brothers provided clergy to parishes and schools within the Diocese of Brooklyn, where they were under the supervision and control of Franciscan Brothers and the Diocese.

4. Saint Francis Preparatory School ("St. Francis Prep" or the "School") is a Catholic high school located in Fresh Meadows, Queens, New York. St. Francis Prep is a citizen and resident of the State of New York. St. Francis Prep is within the jurisdiction and control of the Diocese, and its day-to-day management and operations were at all relevant times conducted by Franciscan Brothers.

5. Dominic Quigley ("Brother Quigley") was a Religious Brother of the Franciscan Brothers. The Franciscan Brothers assigned Brother Quigley as a teacher at St. Francis Prep.

6. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

7. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

8. Venue of this action lies in Kings County as the Defendants have their principal place of business in Kings County.

Duty

9. The Defendants were in the special relationship with Plaintiff of school-student. At all relevant times, Defendants had a duty to Plaintiff in loco parentis and to act as a reasonable parent would in protecting Plaintiff from foreseeable harms and providing for his safety and security on school grounds, during school-sponsored activities, and in the presence of the Franciscan Brothers.

10. The Defendants and Brother Quigley were in a special relationship of employer – employee. The Defendants knew or should have known that Brother Quigley posed a danger to children with whom he would have contacts as a parochial school teacher, and thus the Defendants owed a duty to control Brother Quigley to prevent foreseeable harm.

11. The Defendants owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Brother Quigley.

12. The Defendants owed a duty to exercise reasonable care in hiring, retention and/or supervision of Brother Quigley.

13. The Defendants owed a duty in transferring or assigning Brother Quigley to St. Francis Prep when they knew or should have known that he posed a danger to children in his duties and role as a teacher in a parochial high school.

Brother Quigley's Sexual Assaults of Plaintiff

14. Plaintiff was fourteen years old in 2000 when he began attending St. Francis Prep. Brother Quigley was Plaintiff's Spanish teacher during his ninth-grade year. Brother Quigley took a particular interest in Plaintiff during the course of that school year and developed a close relationship with him.

15. Brother Quigley's grooming of Plaintiff intensified in Plaintiff's sophomore year. Among other things, Brother Quigley would induce Plaintiff into conversations about girls, or with sexual innuendos or content. Brother Quigley, as part of his grooming of Plaintiff to gain his trust, would do favors for Plaintiff, such as handling Plaintiff's detentions to Plaintiff's benefit.

16. Brother Quigley sexually assaulted Plaintiff on multiple occasions in his sophomore and junior years.

17. The sexual assaults took place on the premises of St. Francis Prep, including Brother Quigley's office and in his classroom after the other students had left. For example, Brother Quigley would have Plaintiff serve detentions in his office at the School, during school hours, when he would sexually assault him.

18. The sexual assaults were progressive, in that Brother Quigley would test Plaintiff's boundaries and attempt to get him to acquiesce in further sexual conduct. His acts included, for example, long frontal hugs in which Brother Quigley would press his body against Plaintiff, grab and squeeze his buttocks, grab his penis over his clothes, and growl in his ear.

Notice – Foreseeability

19. St. Francis is one of the largest Catholic high schools in the United States, and at all relevant times, had a public image of an esteemed educational institution with high academic standards and accomplished alumni.

20. However, for years before Plaintiff started at St. Francis Prep in 1999, and during his time there, the School had a systemic problem of teachers and staff members engaging in sexual harassment and abuse of students. The sexual misconduct and sexually offensive acts of teachers and staff was condoned by Defendants and concealed in an effort to avoid scandal and embarrassment within the School community.

21. At the time Plaintiff attended the School, upon information and belief, it was well known among staff and students that Brother Quigley would make sexually inappropriate comments or statements to students.

22. In 2014, a former St. Francis Prep student reported that Brother Quigley had sexually abused him in or about 2003. Upon information and belief, after this report became public, other victims of Brother Quigley came forward and reported sexual abuse by Brother Quigley to law enforcement.

23. Upon information and belief, prior to Plaintiff becoming a student at St. Francis Prep, Brother Quigley sexually harassed, assaulted or molested numerous students at the School over a period of years. At all relevant times, Defendants knew or should have known that Brother Quigley was engaging in sexual misconduct with students.

24. At all relevant times, the Defendants knew or in the exercise of reasonable care should have known that Brother Quigley had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

25. At all relevant times, it was reasonably foreseeable to Defendants that Brother Quigley would commit acts of child sexual abuse or assault on children.

26. At all relevant times, the Defendants knew or should have known that Brother Quigley was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his ministry, counsel, care and/or protection.

27. With such actual or constructive knowledge, the Defendants' acts and omissions provided Brother Quigley with the opportunity to commit foreseeable acts of sexual abuse or assault on Plaintiff.

Diocese's Concealment of Acts of Sexual Abuse by Brothers

28. The Diocese and Franciscan Brothers at all relevant times knew that their clergy were grooming and sexually molesting children with whom they would have contact in their educational, ministerial and pastoral functions. At all relevant times, they knew that this was a widespread, ubiquitous and systemic problem involving many clergymen and numerous victims.

29. Despite receiving credible allegations of child sexual abuse against clergy, the Diocese and the Franciscan Brothers acted to conceal these allegations in an effort to avoid scandal and accountability.

30. This concealment was in accordance with a policy of the Diocese and the Franciscan Brothers, as agents, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Diocese, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

31. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon

those to whom it pertains to keep and observe it in the minutest detail.” *Crimen Sollicitationis* at paragraph 24.

32. The 1962 document reinforced that the Holy See, and its agents to whom the documents were directed, had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

33. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

34. Fr. Fitzgerald’s reports were kept secret under the Holy See’s standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including Defendants, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

35. The Holy See’s policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including Defendants, knowingly allowed, permitted and encouraged child sex abuse by clergy.

36. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move

offending clergy to other locations once they have been determined to be “delinquent.” In response to allegations, the document mandates that supplementary penalties include: “As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

37. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including Defendants in 1988 and 2001.

38. The policies and practices of the Defendants designed to conceal sexual abuse by clergy and protect them from scandal and liability included the following:

(a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;

(b) concealing from parents and even other clergy that a clergyman posed a danger of sexual abuse to children;

(c) failing to alert parents that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

39. Upon information and belief, under this policy the Defendants protected Brother Quigley and avoided exposure of his acts of sexual exploitation and abuse of students. This policy and practice was designed to conceal sexual abuse by clergy and protect them from scandal.

40. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See, the Diocese and the Franciscan Brothers believed it to be perceived as a perquisite, which they condoned and used to their advantage in controlling individual clergymen.

41. Plaintiff was in a zone of foreseeable harm as a student in parochial high school, under the supervision and control of Catholic clergy.

42. The Defendants were in the best position to protect against the risk of harm as they knew of the systemic problem and foreseeable proclivities of their clergy to sexually abuse children.

43. At all relevant times, while the Defendants had special and unique knowledge of the risk of child sexual abuse by clergy, such clergymen and teachers who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted clergy to have access to their children.

44. Plaintiff had no opportunity to protect himself against a danger that was solely within the knowledge of the Defendants.

45. The Defendants knew a significant percentage of clergy were using their status and position to identify, recruit, groom and sexually assault vulnerable children participating in their institutions, including St. Francis Prep.

46. The students at St. Francis Prep were in this manner placed at risk of child sexual abuse.

Breach

47. The Defendants breached their duties by (i) hiring Brother Quigley to teach at St. Francis Prep when they knew or should have known of his sexual proclivities for children; (ii) at all relevant times, retaining and failing to adequately supervise Brother Quigley as a teacher at St. Francis Prep; and (iii) granting and maintaining Brother Quigley's faculties and/or authorization

to minister and teach, without making any warning or notice of his perverse sexual proclivities to the children who would have contacts with Brother Quigley.

48. At all relevant times, the Defendants had inadequate policies and procedures to protect children in parochial school who would encounter clergy in the course of their duties.

49. The Defendants concealed their knowledge that clergy were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by clergy.

50. The Defendants failed to warn Catholic families with children in parochial school that their children were at risk of sexual abuse by clergy in the school.

Nature of Conduct Alleged

51. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

52. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Brother Quigley to retain Brother Quigley in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(Against the Diocese)

53. Plaintiff S.S. repeats and realleges Paragraphs 1 through 52 above.

54. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

55. The Diocese's acts and omissions show a reckless or willful disregard for the safety and well-being of S.S. and other children.

WHEREFORE, Plaintiff demands judgment against the Diocese of Brooklyn for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(Against Franciscan Brothers)

56. Plaintiff S.S. repeats and realleges Paragraphs 1 through 52 above.

57. As a direct and proximate result of the Franciscan Brothers' negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

58. The Franciscan Brothers' acts and omissions show a reckless or willful disregard for the safety and well-being of S.S. and other children.

WHEREFORE, Plaintiff demands judgment against Franciscan Brothers for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT III
NEGLIGENCE
(Against St. Francis Prep)

59. Plaintiff S.S. repeats and realleges Paragraphs 1 through 52 above.

60. As a direct and proximate result of St. Francis Prep's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

61. St. Francis Prep's acts and omissions show a reckless or willful disregard for the safety and well-being of S.S. and other children.

WHEREFORE, Plaintiff demands judgment against St. Francis Prep for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

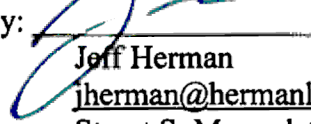
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
November 1, 2019

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100

By: 
Jeff Herman
jherman@hermanlaw.com
Stuart S. Mermelstein
smermelstein@hermanlaw.com
Daniel G. Ellis
dellis@hermanlaw.com